

California Environmental Protection Agency (Cal/EPA)

Advisory Committee on Environmental Justice

March 18-19, 2003

West Sacramento Civic Center/City Hall
1110 West Capitol Ave, West Sacramento, CA

Draft Meeting Summary

(Notes Prepared on April 8, 2003)

DAY ONE: March 18, 2003

Introduction

Committee Co-chair Ms. Detrich Allen opened the first of a two-day session meeting of the Cal/EPA Advisory Committee on Environmental Justice. She began by requesting that all Committee members introduce themselves. After the introductions, Ms. Allen gave an overview of what the Committee will attempt to accomplish by the end of the first session. The purpose of the two-day meeting was to continue the process of developing a set of recommendations on the effective implementation of an Environmental Justice Program for Cal/EPA and its Boards, departments and office (BDOs). The goal of a two-day meeting was to gain major progress towards the development of a final draft version of the EJ recommendations document for formal 60-day public comment review. The focus of the first day was to accomplish the following:

- To reach conceptual agreement on the mission statement (refer to pg. 4 of the EJ Recommendations Document strikeout 3/18/03 version).
- To continue the discussion of Goal 2 (pg 15) and;
- To reach conceptual agreement on the 4 goals of the EJ Recommendations Document

After the overview of the meeting, Mr. Romel Pascual, Designated State Officer for Advisory Committee took the time to thank the West Sacramento Civic Center staff for allowing the EJ Advisory Committee to use their facility for the two-day meeting. Mr. Pascual continued by restating the focus of the meeting and by briefly explaining what the process will look like in drafting the EJ Recommendations document in the upcoming months:

- **April 21, 2003-** The Advisory Committee will reconvene. The goal is to have a finalized or “close” to final draft of the EJ Recommendations document for public review
- **May-June 30, 2003-** EJ Recommendations Document will go through a 60-day public comment period

- **July 2003-** Advisory Committee will reconvene to discuss the public comments and to attempt to finalize the EJ Recommendations Document

Ultimately, the recommendations will go to the Secretary of Cal/EPA and the Interagency Working Group (IWG) for the development of an interagency environmental justice strategy.

Committee Members Present:

Attendees:

- Robert Harris
- Dorothy Hallock
- Henry Clark
- Joe Lyo
- Barbara Lee
- Diane Takvorian
- Dee Allen
- Barry Wallerstein
- Cindy Tuck
- LeVonne Stone
- Bill Jones
- James Kennedy
- Cynthia McClain-Hill (via phone)

Drafting Subcommittee: Revised EJ Recommendations Document (3/18/03 Version) Presentation

Ms. Allen moved to the next item on the agenda and asked the drafting subcommittee Co-Chairs Ms. Barbara Lee and Dr. Henry Clark to start the discussion of the EJ Recommendations document. Ms. Lee began by referring to the most recent draft of the EJ Recommendations document dated March 18, 2003. She explained that the drafting subcommittee incorporated the comments made in the January 10th meeting that were “clear” and “unambiguous.” The subcommittee did not incorporate items that have not been discussed or agreed upon by the full Committee. Ms. Lee encouraged public participation by asking members of the audience to offer their suggestions on the recommendations section of the document (section V) during the public comment period.

Revised EJ Recommendations Document (3/18/03 Version) Discussion: Issue/Mission Statement Section

Following the overview of the latest version of the EJ Recommendations document, Ms. Lee opened a discussion on the mission statement (please see p.4 of EJ Recommendations Document-strikeout version). Ms. Lee made it clear to the Committee that the mission statement is a component that the drafting subcommittee added to the document based on the general conversations the Committee has had in previous meetings. Ms. Lee read the current

version of the mission statement to the audience and Committee members. She explained that in the November 20, 2002 EJ Advisory Committee meeting, the Committee agreed that the document would include an “issue statement” that would describe the issue that the document would address in regards to environmental justice. What was not clear about the “issue statement” was whether the statement would be called a “mission statement” or if the statement would be treated as a paragraph that simply describes the intent of the document. Ms. Lee further explained that based on the Committee discussion in the November 20th meeting, a question was raised: after considering the history of environmental justice and the legislative mandate, what is it that this report is doing?

Ms. Levonne Stone expressed her concern over particular language incorporated in the statement (the first paragraph on page 4). She rejects the idea of having a mission statement that integrates the Environmental Justice state law definition. She disagrees with the statement in the definition that states: “environmental justice is the fair treatment to all people.” According to Ms. Levonne this statement is vulnerable to falling through the cracks just like the equal opportunity law. She also rejects the statement that reads: “The Committee fully endorses the use of good science...” Ms. Levonne explained that the Committee has yet to discuss what “good science” means. She would like to see other factors be endorsed in the statement such as the precautionary principle and the training of doctors and nurses.

The following are suggestions made during the mission statement discussion:

- The statement can be named “purpose statement.”
- The statement can be labeled “executive summary” and be placed in the beginning of the report.
- The document already includes a section (section 3 in EJ document) called “Purpose and Summary of Recommendations.”
- If the statement will be called “mission statement” it needs to reflect “disenfranchised community” and the precautionary principle.
- The statement at the moment is incomplete and needs to be revisited after the precautionary principle discussion.

Committee member Mr. Robert Harris explained that Section 1 of the document looks like an introduction of the report and the last paragraph, which is being referred to as the “mission statement,” is simply the conclusion of the introduction section. He suggested that if Section I is labeled as an “introduction” then every section after that would automatically flow. Ms. Cindy Tuck agreed with Mr. Harris and suggested that the paragraph on page 3 of the EJ document which starts with “This report has been prepared by the California Environmental Protection Agency’s Advisory Committee...” be moved to the beginning of the document and be used as the introductory paragraph and to combine the first paragraph on page 4 in the introduction. Ms. Detrich Allen requested that the motion on the table be restated so that the Committee could take a vote:

The motion: To rephrase Section I of the EJ document as an “introduction” and to relocate the last paragraph on page 3 and the first paragraph on page 4 to the beginning of the section as introductory paragraphs (motion was seconded). ***The motion was passed.***

Ms. Stone stated that if the statement is not amended, that she will oppose placing the statement in the beginning of Section I as an introductory paragraph. Ms. Diane Takvorian reiterated the process of how the Committee was going to go about moving forward with the document. She explained the Committee would go through each section of the document and get a preliminary approval. The approval however, would not end any further discussion needed for each section. The Committee will still have a chance to amend or change any sections before the public comment period. The motion was passed.

Revised EJ Recommendations Document (3/18/03 Version): Approval of Goals-Section V

Ms. Lee went on to the next item on the agenda and opened a discussion on reaching consensus on the phrasing of each of the “goals” in Section V on page.12 of the EJ document. Ms. Lee explained that the Committee had yet to reach agreement on the actual phrasing of the goals as stated in the EJ document. **The following is how the Committee voted to phrase each goal:**

- **Goal #1-**Committee voted to adopt Goal #1 as stated with no changes.
- **Goal #2-**Committee voted to adopt Mr. Joe Lyou’s recommended change to goal #2: *Integrate Environmental Justice into the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies* (please refer to Mr. Lyou’s list of recommendations, recommendation #6)
- **Goal #3-**Committee voted to adopt Goal #3 as stated
- **Goal #4-**Committee agreed to rephrase Goal #4 to: *Ensure cross-media, intra-agency, and interagency coordination and accountability in addressing environmental justice issues.* **The change was adopted.**

Discussion/Proposals: REVISED (3/18/03) EJ RECOMMENDATION DOCUMENT: **Precautionary Principle-Section V: Goal#2**

After the Committee reached consensus on the phrasing of each of the four goals, Ms. Lee shifted the discussion to the Precautionary Principle (please refer to Goal #2 of the 3/18/03 Revised EJ Recommendations Document). To start the discussion on the precautionary principle, Ms. Allen suggested that the Committee members who submitted written proposals on the precautionary principle would speak first to present their proposals. After each proposal, Committee members would have an opportunity to ask questions and open a discussion for that particular proposal.

Precautionary Principle Presentation: Proposal #1 (introduced by Ms. Cindy Tuck)

Ms. Tuck began her presentation by sharing her thoughts on the precautionary principle before presenting her proposal to the committee. She wanted the Committee to think about the following “fundamental” questions:

- Where is Cal/EPA right now in regards to precaution?
- Does Cal/EPA exercise a precautionary approach?
- Is there change needed?
- Does Cal/EPA need to adopt the precautionary principle?
- Are there other changes in the area of precaution that Cal/EPA could make?

It is important to highlight that the Committee has not heard much from each Board, Department and Office (BDO) at Cal/EPA to hear how each BDO exercises precaution. However, Ms. Tuck was able to draw from her experience in working for Cal/EPA to express her point of view of how Cal/EPA exercises precaution. She used the California's ambient and air quality standards as an example of how Cal/EPA exercises precaution. She explained that the Air Resources Board has more standards than the U.S. Environmental Protection Agency (EPA) and definitely more "stringent" standards are in existence in California than in the U.S. EPA. Ms. Tuck believes that when Cal/EPA adopts these stringent standards, precaution is being exercised. In attempting to answer the question of should Cal/EPA move to the precautionary principle? Ms. Tuck named the groups that testified against the precautionary principle in the February 18, 2003 EJ Committee meeting. Furthermore, she concludes that Cal/EPA should not incorporate the precautionary principle but that Cal/EPA should have as a high priority exercising precaution. Ms. Tuck views the precautionary principle as an "extreme" form of precaution. The following are Ms. Tuck's reasons of why Cal/EPA should not incorporate the precautionary principle:

- **Programs.** Regulatory programs need to be based on sound science and not based on allegations of harm.
- **The burden of proof.** Ms. Tuck referenced the Wingspread statement for the precautionary principle and explained that the precautionary principle shifts the burden of proof to the proponent of the product or the activity. According to Ms. Tuck, it is impossible to prove a negative and to prove that there is no threat of harm. In essence, businesses will be faced with having to prove a series of hypotheticals instead of focusing on areas where there are likely to be risks. This in turn it will divert a lot of public health resources.
- **Impact on benefits.** The precautionary principle does not consider the benefits of the activity or the product.
- **Impact on businesses:** Ms. Tuck referred to Ms. Carolyn Raffensperger's (Executive Director, Science and Health Network) handbook that talks about the precautionary principle creating speed bumps for technology. Ms. Tuck explained that California is about entrepreneurship, developing technology, high tech, biotech and that there is no need to create speed bumps for businesses when there is not a problem.
- **Impact on jobs:** The precautionary principle if adopted, would prevent business activity and would stop the development of new projects and new products. This could result in the loss of jobs that could be created.

Ms. Tuck reemphasized that Cal/EPA needs to exercise precaution but that adopting the precautionary principle is not where Cal/EPA should be headed because it is an extreme form of

precaution (Please refer to Ms. Tuck's handout for the proposed changes that she recommended to the Committee).

Committee responses to Proposal #1 (introduced by Ms. Cindy Tuck)

After the conclusion of the presentation, Committee members were given the opportunity to provide feedback on the proposal. Dr. Henry Clark raised a point of clarification and asked Ms. Tuck to define "precautionary approach." Ms. Tuck could not find a formal definition of precautionary approach but responded by explaining the process to which Cal/EPA sets standards and explained how Cal/EPA takes a precautionary approach by taking the "wave of evidence" approach in their risk management programs. Ms. Tuck used OEHHHA (Office of Environmental Health Hazard Assessment) as an example of how Cal/EPA sides with a precautionary approach. She stated that OEHHHA is renowned for using conservative science when compared to the rest of the country. The following are key points made by Dr. Henry Clark:

- The precautionary principle does not reject a scientific approach
- Science has not always been historically accurate
- The precautionary principle is not based on raised allegations of harm

Dr. Clark further explained that the precautionary principle does not necessarily exclude the points raised by Ms. Tuck in using a precautionary approach. People who promote and believe in the precautionary principle believe in science when there is accurate and valid science available. Dr. Clark was not clear with Ms. Tuck's proposal of using valid science as a means to take a precautionary approach. He explained that discrepancies exist within groups of scientific reports. Dr. Clark did support the idea of taking a precautionary approach when information is in a state of inconclusive results. Ms. Tuck again mentioned that it is unfortunate that the Committee has not heard from each BDO at Cal/EPA to better understand how they use a precautionary approach. She believes that the precautionary principle will require that Cal/EPA establish a process to respond to particular allegations of harm. Ms. Tuck asked what would constitute a threat of harm? What level of information does someone need to raise to trigger a threat? and what level of information would Cal/EPA need to provide to prove that there is no threat of harm? Dr. Clark explained that a precautionary approach should be based on the ability to use common sense to assess what causes harm. He added that the precautionary is based on information that would lead a person with common sense to come to a conclusion.

After Dr. Clark's comments, Mr. Joe Lyou took the time to comment on Ms. Tuck's proposal. Mr. Lyou believes that Cal/EPA needs to adopt a precautionary approach because some risk assessments are not accurate. He offered an example of how risk assessments can lead to inaccurate assumptions and in turn these risk assessments can put people at risk for harm. He talked about a particular incident with the U.S. EPA and the risk assessment used in a Superfund site located in Del Amo. The U.S. EPA assumed a certain level of DDT in chicken eggs from exposure of ambient contamination. The model used by the U.S. EPA underestimated the levels of DDT measured in those eggs. According to Mr. Lyou, the data that was observed was not consistent with the model and that caused a risk and harm to the people. The following are key points made by Mr. Lyou in response to Ms. Tuck's proposal:

- Sound evidence has its limits on the unknowns
- The precautionary principle requires to come up with the least harmful alternative and to prove why it is the least harmful alternative before being adopted
- In regards to benefits, benefits should be considered as well as the harms
- The precautionary principle can be used to spur technological development and solutions and pollution prevention
- In terms of jobs, consider the health care costs that come from the impact of pollution

Mr. Lyou concluded his response to the proposal by highlighting the various health studies that indicate adverse impacts and disproportionate impacts on people of color when it comes to the current ambient air standards.

Committee member Mr. Wallerstein offered his response to the proposal and stated that the proposal lacks a level of detail. Mr. Wallerstein suggested that whichever proposal is introduced to Cal/EPA, the proposal must incorporate the various viewpoints that the committee has heard through public testimony. He continued by saying that the proposal needs to provide specific detail as it relates to exercising a precautionary approach in regulatory programs. According to Mr. Wallerstein, the testimony made by the public and the Committee members deserves special attention. Areas that need special attention as it relates to environmental justice include: special populations (e.g. children and the elderly), synergistic effects, approval of and reliance to new chemicals for which there maybe uncertainty about the toxic effects, development of computer models to estimate health risks and analysis of laboratory animal data that is being extrapolated to possible human health effects. Mr. Wallerstein believes that Ms. Tuck's proposal is "generic" and provides a lack of guidance to Cal/EPA. He asked Ms. Tuck if she would consider amending her proposal to add specific elements on areas where Cal/EPA must apply a precautionary approach. Ms. Tuck responded by saying that she would be willing to amend her proposal and that the Committee can come up with examples of areas that require a precautionary approach to provide more clarity.

Ms. LeVonne Stone offered her response to the proposal and she explained that the businesses and organizations that testified against the precautionary principle such as the Black Business Association and the NAACP regional office in Sacramento have not reviewed all of the information put forward to the Committee in regards to the precautionary principle. She wanted to make it clear that the views presented to the Committee are not representative of the national offices. She continued by drawing on her experience of working with her community on a day-to-day basis and her involvement with offices such as the department of health and the department of toxic substances and disease control. She said that the precautionary principle is being discussed within these offices because there is a need to apply this principle. According to Ms. Stone, research data that relates to health risks does not get distributed to the community. Hospitals have admitted that research data issued to them on environmental contaminants are stored away. This is why Ms. Stone proposes the training of nurses and doctors on how to treat environmental diseases. She claims that doctors and nurses only know how to treat symptoms. Furthermore, Ms. Stone believes that the precautionary principle if implemented, will eliminate the burden communities face with having to prove through research and data the adverse affects

of pollution on their health. Ms. Stone continued by referring to President Clinton's Environmental Justice Executive Order 12898 (February 1994) and explained that the order has not been implemented since it was issued in 1994. The order asks for the implementation of environmental justice in all federal agencies and asks agencies to maintain and collect data as it relates to the correlation of pollution and race/national origin. Ms. Stone proposed that the Committee adopt what is in this Executive Order and implement some of its components at the state level.

The following are additional key points made by committee members during the discussion:

- The Committee needs to agree on particular elements that must be adopted and outline those elements under the term "precautionary approach."
- The term "precautionary principle" should be used because the environmental justice community is proposing the term. It would be unfair to the environmental justice community to adopt the business community's term of "precautionary approach."
- A precautionary statement must include the following elements: good scientific methods, full disclosure, alternatives, and public commentary.

Precautionary Principle Presentation: Proposal #2 (introduced by Ms. Diane Takvorian)

After the Committee member discussion on Ms. Tuck's proposal, Ms. Diane Takvorian got the opportunity to present her proposal (please refer to Ms. Takvorian's draft proposal). She started her presentation by announcing that the recommendation she is putting forward to the committee is a collaboration of views of the people who are involved with the environmental justice movement. She continued by saying that so far forty organizations have testified to the Committee over the importance of using precaution. These forty organizations represent thousands of Californians, mainly impacted Californians who believe that environmental justice can be achieved by implementing a form of precaution. Precaution to the people who work and live in impacted communities means fixing the problems that create environmental injustices and preventing the creation of new ones. Thus, Ms. Takvorian believes that environmental justice cannot be achieved without a significant approach of solving the problems that exist today. She stated that the system simply does not work and disagrees with Ms. Tuck's proposal. There is a need for a new framework that will include elements that do work in the current system. Therefore, Ms. Takvorian proposes the following recommendations (please refer to Ms. Takvorian's proposal to read the details under each of the five recommendations below):

1. The State of California should use the Precautionary Principle as the basis for all environmental and public health laws, regulations and decision-making processes.
2. The Precautionary Principle will be defined by the State of California/Cal/EPA (please refer to Ms. Takvorian's proposal for definition)
3. Precautionary action should be taken to correct existing environmental injustices
4. Precautionary action should be taken to prevent creation of new EJ problems
5. Cal/EPA should establish health and environment goals

Committee Responses to Proposal #2 (introduced by Ms. Diane Takvorian)

Ms. Takvorian's proposal received a lot support and appreciation on behalf of most of the Committee members. During the process of her presentation, Committee members made their suggestions on how to revise the language on the proposal. For the most part, the changes made to the proposal reached Committee consensus. The following are key points made:

- The phrasing of the examples provided in the proposal is of concern. The manner in which the examples are phrased will be key.
- The proposal is the closest to providing real "direction" in how to deal with pollution prevention in schools.
- The proposal will benefit by adding specific examples. Consider changing "pollution prevention" to "pollution control with an emphasis on prevention" (please see recommendation #3)
- The requiring aspect of the proposal should be made stronger
- Consider the adoption of alternatives. Consider changing the word "require" to "consider" (please see recommendation #3 item "e")
- The term "limit" should be included when it comes to diesel truck traffic. Traffic in some instances can be limited but not prohibited (refer to recommendation #3 example #2).

Ms. Takvorian made it clear to the Committee with she would not support the term "consider" and would like to keep "require" in the items in her proposal. Mr. Harris supports the proposal and explained that the proposal includes the basic principles that a precautionary statement must include. However, he did mention that proposal does require word smiting. He supports the recommendation of having municipalities prohibit diesel truck traffic through residential communities. He believes that government itself must be held accountable for its own behavior. Mr. Harris suggested that the language be changed to "prohibit vehicle traffic" (please refer to recommendation #3 example #2).

Ms. Stone raised a question and asked if "facilities" under the California Right to Know law is inclusive to federal agencies. Ms. Takvorian agreed that to be more specific, the term "federal facilities" must be included. Towards the end of the discussion, Mr. Bill Jones raised a question of what entity carries the jurisdiction to implement some of the recommendations in the proposal? The examples provided are strictly examples of local issues where municipalities have jurisdiction and not the state of California. Ms. Lee suggested that the final language of the proposal must include what Cal/EPA can adopt and where Cal/EPA does not have the authority to adopt some of the recommendations, the committee can recommend for Cal/EPA to consider the statutory change.

LUNCH BREAK

After the Committee reconvened, the discussion on Ms. Takvorian's proposal resumed. The Committee decided that they would continue providing their suggestions and responses to recommendation #2 and #3. Ms. Takvorian began her discussion of recommendation #3: *Promoting science and technology for pollution prevention and environmental justice*. The following are key points made by Committee members:

- This recommendation opens the door to a lot of educational opportunities to educate school systems and workers on the harmful toxics they can potentially be exposed to.
- For recommendation #3(a), consider adding this proposition as an additional responsibility to OEHHA. This can be a least expensive alternative as opposed to creating a separate office from a budgetary perspective with a new director.
- This recommendation seems like an "engineer heavy" issue and OEHHA is not engineer oriented to be able to enforce the recommendation.
- The recommendation can be phrased differently in order to allow Cal/EPA some discretion to accomplish this goal in the least cost effective way.
- In order to meet this recommendation, money should be fought for and found to fund the creation of a new Office.

The Committee had an extensive discussion in recommendation #3 on whether an Office of Pollution Prevention can be created considering the current budget crisis and the added expense of running a new office to carry out the goals under this recommendation. Committee members deliberated over creating a new office or whether to charge these goals to existing offices at Cal/EPA such as OEHHA. Ms. Carol Monahan the assigned counsel suggested that the Committee avoid struggling with the legality of creating a new office but rather the Committee should concentrate on making the recommendation to Cal/EPA. Cal/EPA understands the methodology of creating a new office.

Ms. Lee reiterated the process in which the Committee would go about agreeing to the proposal. Ms. Lee explained that the Committee would reach agreement on the concepts of the proposal and have a separate discussion on where those sections will fit best in the EJ Recommendations Document.

The Committee members continued offering details and changes to the recommendations (please refer to revised proposal for changes); the modifications were made during the meeting by staff.

COMMITTEE DISCUSSION: PRECAUTIONARY PRINCIPLE - PROPOSAL #2 **(Introduced by Ms. Diane Takvorian)**

The following is a recap of the changes made where the Committee reached conceptual agreement:

Recommendation #3 Item #1: *Reducing the risks to children through pollution prevention*

- Item 1a- Committee agreed to keep as written
- Item 1b- Committee agreed to keep as written

- Item 1c- Committee agreed to keep as written
- Item 1d- Committee agreed to add municipalities or a reference to local government
- Item 1e-The Committee did not reach consensus as written but agreed on the following change:
- The committee reached consensus on providing examples under this recommendation but did not agree on the examples as written.

Recommendation #3 Item #2: *Reducing the risks to impacted communities*

- a) Cal/EPA should identify all facilities that may pose a threat to human health and the environment because of their storage, use, disposal or emissions of hazardous substances. To implement this action item, Cal/EPA should make use of currently available data under California's right to know laws, and shall at a minimum rely on the thresholds for reporting under those laws.
- b) Cal/EPA should, through a public process, assess cumulative pollution burden for communities based on the degree of threatened harm to human health and the environment that they experience.
- c) Cal/EPA should, through a public process, prioritize communities, using the information in (b) above.
- d) Using the data available from (a) through (c), and public process, Cal/EPA should identify disproportionately impacted communities.
- e) Cal/EPA should, using a public process, establish goals and performance measures to reduce the threat of harm to human health and the environment in these disproportionately impacted communities through enhanced emissions controls and pollution prevention.
- f) Cal/EPA should, in collaboration with OPR, identify actions that local government should consider to reduce the impacts of pollution in the identified disproportionately impacted communities, such as:
 1. Creation of buffer zones around significant sources of risk
 2. Relocation of small sources away from residential areas or sites of sensitive receptors
 3. Prevention of siting of facilities that would increase the impacts of pollution on the community without findings of overriding considerations
 4. Facilities to adopt stricter control and/or pollution prevention measures to reduce the overall emissions and releases

Cal/EPA and OPR should support and enhance the role/authority of community residents through community planning groups or other entities to play a significant role in determining the methods for reducing pollution.

Recommendation #3 item #3: *Promoting science and technology for pollution prevention and environmental justice.*

Committee reached consensus on Recommendation #3 item #3 with the addition of another item that states: provide technical assistance to local governments and businesses in accomplishing pollution prevention.

Throughout the discussion of the Ms. Takvorian's proposal, the Committee struggled reaching consensus on some of the recommendations because of the unawareness of the jurisdiction and statutory authority that Cal/EPA attains to be able to enforce some of the recommendations in the proposal.

COMMENT PUBLIC PERIOD

• Marta Arguello (Physicians for Social Responsibility)

Ms. Arguello suggested to the Committee to create new models for public participation because it is difficult for the public to provide feedback on the items that the Committee is voting on during their discussion. She suggested that the EJ Recommendation Document should state the general duty of Cal/EPA, which is to protect human health and the environment. This will set the framework to develop prevention and precautionary policies. Ms. Arguello continued her statement by providing her comments on the examples that were developed in Ms. Takvorian's proposal. Ms. Arguello provided an example in how the precautionary principle can be used at the school district level. She explained that the healthy schools act called on the department of pesticide regulation to come up with best practices. Ms. Arguello mentioned that If the precautionary principle were incorporated, then the "best practices" would have been similar to the LAUSD (Los Angeles Unified School District), which removed the most toxic pesticides from the tool box. For recommendation #3 item #2-*Reducing the risks to impacted communities*-Ms. Arguello would include the term "exposure" so that it reads: *Reducing the risks and exposure to impacted communities*. Furthermore, Ms. Arguello suggested a recommendation to develop economic incentives to promote precaution. The way to accomplish this according to Ms. Arguello is by developing more polluter pay. She also proposes that the Committee include some elements of the San Francisco Precautionary Principle statement. Lastly, Ms. Arguello proposed to the Committee to consider long term and short-term costs when evaluating alternatives.

• Bhavna Shamasunder (Urban Habitat EJ Organization)

Ms. Shamasunder made her comments and offered her suggestions to the proposal. She began with recommendation #2 and asked that the Committee include a clear list of what the precautionary principle entails if a decision is made to delete the definition. According to Ms. Shamasunder, a list of times under the precautionary principle should include the following: a broader examination of risks, greater public participation and decision making, a thorough analysis of alternatives, a requirement that the least harmful alternative be adopted, and clean production and accounting for cumulative impacts. For recommendation #3 item #3 Ms. Shamasunder explained that current legislation proposes polluter pay mechanisms. She continued to provide her suggestions but not on Ms. Takvorian's proposal but rather on the current version of the EJ recommendations document. On page 13 of the recommendations document Ms. Shamasunder proposes to include "relationship building and outreach." She feels that the outreach discussion in the document is not thorough. She suggests that one way of doing outreach is by contacting key stakeholders such as churches and grass root organizations and constituents in the community. In the relationship building section, there should be a clear description to the responsiveness to community concerns. Under the land use and zoning

section, Ms. Shamasunder proposes that Cal/EPA connect to existing redevelopment processes to provide information. Ms. Shamasunder mentioned that the city of Oakland the central city redevelopment area, has many brown field sites but the city does not have a complete database. Her last recommendation under the site remediation section was to include a list of funding opportunities especially for phase II funding.

● **Aujuli Gupta (Redefining Progress)-**

Ms. Gupta wanted to address comments made on the February 18 meeting from labor groups and groups representing people of color. She reiterated the testimonies issued by the labor groups, which mentioned that the precautionary principle leads to job loss. She stated that her organization is part of a coalition that believes that the statement is untrue. She explained that most of the comments made in the February 18 meeting, came from individuals and regional offices as oppose to the national offices which are not representative of the views expressed. She continued her testimony by explaining that Redefining Progress is the current host and fiscal agent for the environmental justice and climate change initiative. Redefining Progress is a network of 28 major environmental justice organizations across the country. Ms. Gupta named the 28 organizations to the Committee. She said that the organization settled on ten organizing principles for just climate policies in the U.S. Principle number 3 is “just transition” which means that no worker or community should bare the burden of any change in industry. Principle number 9 says to “use caution in the phase of uncertainty.” She explained that these principles were thought of before the existence of the precautionary principle, which includes similar elements. Furthermore, Ms. Gupta mentioned that the goal of the organization is to reduce the U.S. economy’s dependence on fossil fuel so that U.S. can transition to renewable energy sources. She concluded her testimony by stating that her organization supports workers rights and the precautionary principle and that the purpose of her testimony was to “spell any myth” that the precautionary principle works against workers in the fight for environmental justice.

● **Terrence Valen (Silicon Valley Toxics Coalition)**

Mr. Valen began his testimony by mentioning that the Silicon Valley Toxics Coalition has been working for twenty years on toxic chemicals in high tech industry from multiple perspectives: worker health and safety, contamination of ground water and the environment, consumer perspectives, and recyclers and producers perspectives. He announced his support to the work and effort the Committee has shown in regards to pollution prevention and the precautionary principle. He supports Ms. Tuck’s comment of protecting the internal processes of producers, but claims that from a worker health and safety perspective, it is difficult to get at the internal processes in the high tech industry without the implementation of the precautionary principle. According to Mr. Valen the Silicon Valley has created a “culture of secrecy” and a culture of not moving towards a more progressive environmentally conscious production processes. According to Mr. Valen, Silicon Valley has the most intelligent engineers but that they are not environmentally conscious and occupationally safe in healthy practices. Furthermore, Mr. Valen suggested that the Committee provide a definition of the precautionary principle so that Cal/EPA incorporates this definition. This in turn will build a culture of precaution, pollution prevention, cumulative impact and toxicity reduction. He concluded his testimony by expressing his concern on the Committee discussion of ranking communities who demonstrate a high exposure to

pollutant chemicals. Mr. Valen views this ranking process as another risk assessment process; a process that has not benefited impacted communities.

- **Mike Boyd (C.A.R.E)**

Mr. Boyd was the last public commentator and he is the director of C.A.R.E an organization that has brought several civil rights complaints before federal authorities. Mr. Boyd mentioned that there are pending complaints made against two power plants cited by the California Energy Commission in Pittsburg, California. Mr. Boyd stated that C.A.R.E is involved in the fight for protection of civil rights throughout California against the development of thermal power plants in the state. His concern is that California does not have a common protocol in evaluating the impact and the risk associated with development projects. Different projects use different methodologies in determining the risk associated with the development of projects specifically with power plant projects. According to Mr. Boyd, C.A.R.E supports utilizing the precautionary principle and risk assessment when evaluating the impacts of communities of color. He explained what the precautionary principle means to C.A.R.E. and offered his interpretation: when establishing a cause effect relationship between the impact of air emissions from projects and the health risk associated with those projects, you must err on the side of caution. When performing a risk assessment worst-case scenario must be assumed and the results must consider the worst-case scenario that can result from projects. Mr. Boyd believes that the precautionary principle is a collateral benefit for the workers in the project sites because a risk to them is the same to the general public.

Meeting Adjourned

After the continued discussion of Ms. Takvorian's proposal, Committee members decided that they would continue drafting the proposal on the second day of the two-day meeting (March 19, 2003). Ms. Allen thanked the Committee members for their dedication and hard work.

Meeting adjourned.

Day Two: Wednesday, March 19, 2003

WELCOME & EXPECTATIONS FOR THE DAY:

Ms. Dee Allen, Committee Co-Chair welcomed the Committee back and opened the meeting by reiterating the purpose of the meeting: to reach close to a final version of the Draft EJ Strategy Recommendations Document for public review.

Secretary Winston Hickox continued his statement by expressing his appreciation for the Committee's time and effort to environmental justice. He considers the Committee's recommendations as a valuable work product and tool for the Agency's implementation of environmental justice. He shared that legislators he had spoke with often asked about environmental justice. He was pleased to share the progress of the Advisory Committee, including the Committee's efforts to address cumulative impacts and the precautionary principle.

Additionally, Secretary Hickox, shared information and insights about the Environmental Protection Indicators for California (EPIC) Project. He explained that the EPIC Project is a collaborative effort of Cal/EPA's Boards, Departments, and Office as well as the Resources Agency, the Department of Health Services, and an external advisory group. The project, led by the Office of Environmental Health Hazard Assessment (OEHHA), is an effort to change the way of measuring whether the Agency is attaining environmental goals.

Committee Members Present:

- Co-Chair, Ms. Dee Allen
- Co-Chair, Ms. Diane Takvorian
- Mr. Barry Wallerstein
- Ms. Cindy Tuck
- Mr. Joe Lyou
- Dr. Henry Clark
- Ms. LeVonne Stone
- Mr. Jim Kennedy
- Ms. Dorothy Hallock
- Ms. Donna Pittman
- Ms. Barbara Lee
- Mr. Robert Harris
- Mr. Carlos Porras
- Mr. Michael Dorsey
- Ms. Cynthia McClain-Hill (via conference call)
- Mr. Bill Jones (via conference call)

COMMITTEE DISCUSSION: PRECAUTIONARY PRINCIPLE - PROPOSAL #2
(Introduced by Ms. Diane Takvorian)

The Committee continued their discussion on Ms. Takvorian's proposed precautionary principle language from Tuesday's, March 18th Committee meeting (refer to Ms. Takvorian's proposal document).

Below is the edited language of Ms. Takvorian's Proposal (Proposal #2) that the Committee crafted on the previous day (March 18, 2003). The edited language refers to Recommendation 3 of the Ms. Takvorian's proposal.

Recommendation 3, item 2 (a) through (e) language below:

Reducing the risks to impacted communities:

- a) Cal/EPA should identify all facilities that may pose a threat to human health and the environment because of their storage, use, disposal or emissions of hazardous substances. To implement this action item, Cal/EPA should make use of currently available data under California's right to know laws, and shall at a minimum rely on the thresholds for reporting under those laws.
- b) Cal/EPA should, through a public process, assess cumulative pollution burden for communities based on the degree of threatened harm to human health and the environment that they experience.
- c) Cal/EPA should, through a public process, prioritize communities, using the information in (b) above.
- d) Using the data available from (a) through (c), and public process, Cal/EPA should identify disproportionately impacted communities.
- e) Cal/EPA should, using a public process, establish goals and performance measures to reduce the threat of harm to human health and the environment in these disproportionately impacted communities through enhanced emissions controls and pollution prevention.
- f) Cal/EPA should, in collaboration with OPR, identify actions that local government should consider to reduce the impacts of pollution in the identified disproportionately impacted communities, such as:
 - 1. Creation of buffer zones around significant sources of risk
 - 2. Relocation of small sources away from residential areas or sites of sensitive receptors
 - 3. Prevention of siting of facilities that would increase the impacts of pollution on the community without findings of overriding considerations
 - 4. Facilities to adopt stricter control and/or pollution prevention measures to reduce the overall emissions and releases
- g) Cal/EPA and OPR should support and enhance the role/authority of community residents through community planning groups or other entities to play a significant role in determining the methods for reducing pollution.

COMMITTEE DISCUSSION: Proposal #2 (introduced by Ms. Takvorian)

A number of Committee members expressed concern about certain aspects of Ms. Takvorian's proposal document. A statement was made about the concern of moving towards cumulative impact analysis before the tools were developed. Committee member Ms. Tuck questioned how the process would function in practice, and what would trigger such an analysis. Committee member Mr. Wallerstein responded to Ms. Tuck's concern by saying that perhaps it would be beneficial to include language that acknowledged that the process would be a new endeavor and would need considerable dialogue with stakeholders and would involve a formal public process.

Also, a concern was raised regarding the Committee's previous storage disposal discussion. Committee member Mr. Michael Dorsey stated there are programs in place that address such issues. He mentioned that under the Office of Emergency Services there are the Cal/ARP (California Accidental Release Prevention) Program and the federal Risk Management Program (RMP). Mr. Dorsey stated that "Just because a facility stores chemicals doesn't mean that they are polluting the environment." Mr. Dorsey also posed several other questions and concerns:

- Was the Committee asking Cal/EPA to duplicate already existing programs and was there dissatisfaction with the existing programs?
- Was the Committee talking about a pollution burden, an accidental release or potential storage burden?
- It appeared as though the Committee was branching out to talk about communities in general -the scope was very broad - whereas he believed that the intent of the Committee was designed to deal with and give advice to Cal/EPA on environmental justice communities in particular. Mr. Dorsey expressed his concern about how he thought the Committee was trying to take on too much. He stated he didn't believe any one agency had the resources to evaluate every community.
- Was the Committee suggesting more collection of data? Is so, who is to collect, maintain, and analyze the data? Mr. Dorsey is concerned about the extra burden the suggestion would place on local agencies. He explained that as local CUPAs, there are mandates on the data collected and that the CUPAs had gone through a major process with Cal/EPA to identify data elements and data requirements that are collected. He also mentioned that there is current data and information available that could be used for the Committee's suggested recommendation purposes.

After Mr. Dorsey expressed his concerns a number of Committee members responded. Ms. Takvorian responded to the issue of using existing tools and data to do a comprehensive community assessment to look at the pollution burden a particular community. She stated that Cal/EPA should start with a comprehensive list and then tailor the list down - suggesting a different way to analyze currently existing data. Committee member Ms. Stone suggested utilizing grassroots community organizations as resources for information.

The Committee agreed that language should be added to the document to reflect the following: “Cal/EPA actions would not result in unfunded mandate on local government and local programs.”

Ms. Takvorian recommended adding a preamble to the precautionary principle language such as the following:

”In order to reduce the risks to impacted communities, Cal/EPA would create a profile of communities in order to assess the potential and actual pollution burden using existing data and ensuring that there not be an unfunded mandate. Those efforts should be carried out through new and/or existing resources.”

A statement was made about the Committee not reaching consensus on how to categorize or prioritize based on hazardous materials use and storage; however, the Committee acknowledged that there were important issues to consider in terms of taking action to reduce the burden on those communities. Mr. Lyou suggested that the Committee be more specific in terms of talking about environmental justice communities, defining what those risks were within those communities, and putting the necessary resources within those communities. It was suggested Cal/EPA should use reasonable thresholds to screen out communities that obviously have a low degree of threatened harm. Ms. Tuck added that Cal/EPA had an obligation for the fair treatment of all people.

Committee member Clark posed a concern about facilities that fall under thresholds but still posed a serious health and environmental threat. Mr. Dorsey suggested it would take a legislative change to require “under threshold” reporting.

Suggested Changes to Recommendation 3 of Proposal #2

The Committee continued its discussion and offered suggested changes to the proposal. The suggested changes below reflect Committee discussion and collective edits to Recommendation 3 of the Precautionary Principle proposal that was initially introduced by Ms. Takvorian.

Suggested edits include:

- Adding “disproportionately impacted” before communities
- Bullet (e) options (1) and (2) see below: left as options to address additional facilities in regards to siting and land-use – To Be Worked on at the Next Advisory Meeting
 1. (Option 1) Prevention of siting of facilities that would increase the impacts of pollution on the disproportionately impacted community unless there are community validated findings of overriding consideration
 2. (Option 2) Examine mechanisms and tools to assist local government in siting criteria and design of facilities that would significantly increase the impacts of pollution on disproportionately impacted communities.
- There was a statement made about the term “support” – want to ensure support would not be made to help groups lobby (not permitted legally); “support” would be made more explicit with examples as information, guidance documents, education, etc.

- Bullet (g): change of “authority” to “role”
- Desire to emphasize government entities have a greater role and not just community residents
- Revision of bullet (g) to: “Cal/EPA and OPR should encourage participation and support agencies, state and local to enhance the role of disproportionately impacted communities to play a significant role in determining the methods for reducing pollution.”
- Addition of (h) “For items (a) through (g), Cal/EPA actions should not result in unfunded mandate on local government and local programs.”

Committee Discussion: Recommendation 4 of the Proposal #2 (introduced by Ms. Takvorian)

The Committee continued its discussion of Proposal #2 that was introduced by Ms. Takvorian. Below is a summary of changes to Proposal #2 proposed precautionary principle language **Recommendation (4)** from the Committee discussion for inclusion into the Committee EJ Strategy Recommendations Document:

Committee members agreed that recommendation (4) section referenced new permits and suggested possible ways to address potential risks. Some concerns arose from the discussion of recommendation (4). A concern was raised about local governments conducting cumulative impact assessments. The following questions were posed:

- What tools are currently being developed?
- What is the timeframe of the development of the tools?

Currently, there did not exist an agreed upon way of doing a cumulative impact analysis. Another concern arose about cumulative impacts affecting the permitting process. Mr. Dorsey stated there might be some resistance on the bullet and may want to recommend the use of best practices and/or other safety measures. Ms. Tuck stated there might be strong concern from the business community about bullet (3) because business sector appreciated the focus to reduce pollution but was concerned about being told how to make their products. She went further to add that there hadn’t been discussion on what’s currently required under CEQA for alternatives assessment – and was interested in knowing the problems in the existing process and what are the goals to accomplish.

The following are additional key points made by Committee members:

- OPR should consider, through a public process, the inclusion of the environmental justice guidelines within the General Plan revision to be a mandatory requirement instead of a voluntary suggestion.
- A suggestion was made to change the language of bullet 2 (b) from “develop land-use and zoning provisions” to “municipalities would adopt new” which would use buffer zones to prevent resident sources from pollution.

- Mr. Wallerstein recommended at the end of bullet (3) to add a reference to technologically and economically feasible tools needed to protect human health.

It was suggested that Cal/EPA should identify ways to reduce burden of pollution and prevent new risks. Suggestions were also made to identify preventative alternatives such as the following:

- Recommend Cal/EPA and the Governor's Office of Planning and Research (OPR) develop a list of suggested amendments to the CEQA process that would prevent the creation of EJ problems;
- Urge Cal/EPA to come up with land-use guidance documents based on currently available knowledge of reasonable and cost-effective things that could be done right away which would minimize or avoid problems; and encourage Cal/EPA report back to the Committee the results;
- Encourage Cal/EPA to take on a broader document paper
- Support the development of usable effective tools as they become available – identify ways of getting cumulative impacts with data and information currently available.
-

Committee Discussion: Recommendation 5 of the Proposal #2 (introduced by Ms. Takvorian)

The Committee proceeded to continue its discussion on the Proposal #2 that was introduced by Ms. Takvorian. The Committee moved its discussion to recommendation 5 of Proposal #2. Below is a summary of changes to Ms. Takvorian's proposed precautionary principle language **Recommendation (5)** from the Committee discussion for inclusion into the Committee EJ Strategy Recommendations Document:

A suggestion was made that Cal/EPA should, through a public process, work in collaboration with the Department of Health Services in regards to this recommendation.

REVISED (3/18/03) EJ RECOMMENDATIONS DOCUMENT – Committee Discussion

Upon completion of the Committee's discussion on the precautionary principle proposals introduced by Committee members, Co-Chair Allen moved the discussion to the 3/18/03 Version of the Revised EJ Recommendations document. The Co-Chair indicated that the Committee had had a robust discussion on the issue of precautionary principle, and time was limited in the next discussion of the Revised EJ Recommendations Document. In an effort to assist the Drafting Subcommittee revise the next version of the EJ Recommendations document, the Co-Chair instructed the Committee to articulate issues they may have with respect to the substance of the 3/18/03 Version of the Revised EJ Recommendations Document.

The following is a summary of the Committee's revision discussion reflected by the changes of the 3-18-03 version EJ Recommendations Document.

(From 3-18-03 Strikeout version, p.15)

Goal #2: *Ensure environmental justice is integrated into the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies.*

Committee Members expressed the following as **issues of concern**:

- Program Development & Adoption (p.17)
 - Last bullet: “Develop and implement an [EJ screening tool] based on [best management practices] to identify areas of high environmental risks” – More clarification; also, what is the purpose of this?; should try to avoid redlining of communities.
- Land Use & Zoning (p.18)
 - The Committee expressed that they will need further discussion on this issue, and that they see some overlap from other sections in document.
- Site Remediation (p. 18):
 - Bullet 2: “Give high priority to remediation projects in situations of known Environmental Justice problems” – Cal/EPA should focus on sites that pose the greatest health risk without regard of where they are. Recognition that there are other sites. More language about what is meant here for clarification.
 - Bullet 3: “To promote the reuse of known or suspected contaminated (i.e., Brownfield) sites, and to increase the supply of affordable housing Cal EPA should...”
 - Should add language related to “federal facilities”, particularly related to housing on federal facilities;
 - Concern about Brownfields as a solution – standard of remediation depends on type of proposed land-use (may contribute to lack of affordable housing). Easier to develop open-space or commercial land-use. This bullet doesn’t speak to the priority of affordable housing and that environment and public values are the driver here not development;
 - No housing on existing landfills;
 - Redeveloped contaminated sites could also be open-space & commercial development (D. Allen to forward language)
 - Subsection 1: “Establish a statewide database of contaminated sites that, after clean-up, have redevelopment and/or affordable housing potential, and publish this information online” [*Note: reference to “Cortese List” may be appropriate here, more info needed*] - “Cortese list” reference should be listed as a possible starting point or example of a list – not comprehensive

list;

- Subsection 5: “Eliminate duplication in oversight authority for Brownfield between the DTSC and SWRCB (State Water Res. Control Board). Improve the process for determining a lead agency in order to eliminate inefficiencies that result from fragmentation; and” – There was legislation that was supposed to do this; add language to ensure having right technical expertise to handle the clean-up
- Subsection 6: “Further seek clarification of the roles of state and local agencies in brownfield redevelopment, and provide fiscal and regulatory incentives to developers and communities to clean-up contaminated sites” – ensure “fiscal and regulatory incentives doesn’t mean clean-up standards are not relaxed
- Land Use – future of mixed zoning areas; suggest beef up of land use section & more analysis;
- Important to streamline the process and get things done
- Program Enforcement (p. 19):
 - Clarification (posed by CUPA rep) whether this section scope is broad
 - Inclusion of J. Lyou’s bullets #14 & 15
 - Cal/EPA should focus on where there are real compliance problems
 - Add language to the effect that auditing ensures complaint process are effective while providing resources (e.g., training, standards of format for taking complaints)
 - Establish a Complaint Response protocol for each Cal/EPA BDO, including accessibility of complaint lines, language barriers, timeliness of response, investigation procedures, and feedback to the complainant. - possible name change of “Complaint Response protocol” to “Complaint Resolution Protocol”

(From 3-18-03 Strikeout version, p.19)

Goal #3: *Improve research and data collection to promote and address environmental justice related to the health and environment of communities of color and low-income populations.*

- Committee in basic agreement of key concepts
- Heartburn Issues:
 - Infrastructure of funding for OEHHA
 - Inclusion of health related information
 - Community Based Research (p.21):

- Bullet 3: “Establish mechanisms to support community-based research projects (e.g., grants, loans, technical assistance, or collaboration)” – revise with language from AB 2312 to solve this heartburn
 - Clarify that “community” means community & not government
 - Ward Connelly’s Racial Privacy Initiative
- Draft criteria checklist

(From 3-18-03 Strikeout version, p.21)

Goal #4: *Ensure effective cross-media coordination and accountability in addressing environmental justice issues.*

- Committee in basic agreement of key concepts
- Heartburn Issues:
 - Agency Accountability (p.21):
 - Bullet 2: “Provide appropriate resources to carry out activities by Cal/EPA Boards, Departments and Office to address environmental justice issues” - include language to provide adequate budget or consideration into budget
 - Bullet 6: “Clarify roles and responsibilities of federal, state, local, and (where applicable) tribal or Mexican governments/agencies with regard to environmental justice issues within the community” – clarification of inclusion of term “Mexican governments”
 - Draft criteria checklist
- **Appendix**
 - Add Dorothy Hallock’s Tribal Perspective Document to appendix

NEXT STEPS:

The Committee agreed that they would hold the discussion on Section VII: Additional Recommendations from the 3-18-03 Strikeout version - until the next Committee meeting on April 21st, 2003. The Committee also agreed to reserve the April meeting to prioritize recommendations the Committee would be approving. Members emphasized the importance to make a presentation to the Interagency Working Group on Environmental Justice before the 60-day public comment period in order to receive feedback from both bodies at the same time.

Also, the Committee unanimously decided to set aside the April 21st meeting to the following: finish the EJ Advisory Committee Strategy Document, send a status memo to the Cal/EPA Secretary and Interagency Working Group, and schedule a follow-up meeting to present and discuss the results of the draft.

MEETING ADJOURNED – Next Meeting Scheduled for April 21, 2003 in Sacramento